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August 18, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation

AT&T Wireless Services, Inc. and Cingular Wireless Corporation,
WT Docket No. 04-70, DA 04-932, File No. 0001656065 et al.

Dear Ms. Dortch:

On August 17, 2004, representatives of Thrifty Call, Inc. ("Thrifty Call"), Danny E. Adams, Kelley Drye & Warren LLP, Thomas Cohen, The KDW Group LLC, and Seth B. Sacher, Ph.D, Bates White, LLC, met with Barry Ohlson, Senior Legal Advisor, and Scott Bergmann, Legal Advisor, of Commissioner Jonathan S. Adelstein's office to discuss the above-referenced applications. The discussion included points raised in Thrifty Call's Petition to Deny and Reply to Joint Opposition to Petitions to Deny and Comments. The discussion also included a summary discussion of Thrifty Call's economic experts, Bates White, which is attached to this letter.

Respectfully Submitted,

Danny E. Adams

Enclosure

Cc: Barry Ohlson, Senior Legal Advisor, Office of Commissioner Jonathan S. Adelstein
Scott Bergmann, Legal Advisor, Office of Commissioner Jonathan S. Adelstein

VA01/PRICJ/54064.1

••BATES•WHITE••

Competitive Concerns Regarding Cingular Wireless' Acquisition of AT&T Wireless

Presentation to FCC on Behalf of Thrifty Call

August 4, 2004

2001 K Street NW, Suite 700 • Washington, DC 20006 • www.bateswhite.com

Anticompetitive concerns

- An immediate reduction in competition in wireless communications by making coordinated interaction "more likely, more successful, and more complete"
- "Monopoly maintenance" effects that will hinder the evolution toward more competition for wireline service
- Bundling concerns that will hurt wireless competitors, CLECs, and consumers
- Creates market conditions that will lead to further consolidation

Agenda

- Overview
- Structural analysis
- Coordinated interaction
- Bundling concerns
- Summary of competitive analysis
- Efficiency claims

Overview

Transaction overview

- Acquisition would merge second and third largest wireless carriers to create the largest U.S. wireless carrier with 46 million customers and annual revenue exceeding $32 billion
  - Larger than Nextel, T-Mobile, and Sprint **combined**
- Would eliminate largest wireless carrier not affiliated with a wireline provider
- Would place two largest wireless carriers in the hands of the three largest RBOCs

Structural Analysis

Structural analysis indicates transaction raises competitive concerns

- Post-merger concentration in a national market indicates wireless telephony is highly concentrated
- Overall concentration ratios are increasing

	1997	1998	1999	2000	2001	2002	Post merger
Top two as percent of total subscribers	21%	21%	25%	43%	40%	39%	54%
Top four as percent of total subscribers	40%	41%	44%	67%	67%	66%	75%
Top six as percent of total subscribers	55%	55%	59%	79%	79%	82%	87%

Source: FCC wireless industry competition reports. Calculations by Bates White.

- Concentration among national carriers is even higher
- Entry will not offset competitive harms

Despite national pricing, regional effects should be considered

- In EchoStar–DirecTV, DoJ and FCC rejected notion that national pricing implied national markets
- Competition in wireless communications is differentiated across regions

Regional price effects should not be ruled out

- Customers will not choose an area code for their cell phone that results in long-distance charges for local friends and family
- Parties' regional pricing results should be corroborated

Coordinated Interaction

General industry trends raise concerns about coordinated interaction

- Despite the "success story" of wireless competition, there are some trends that point in the other direction:
  - Examples of cooperation among major competitors
  - Increasingly transparent pricing plans
  - Decreased presence of regional players
    - Implies increasing symmetry and disappearance of likely "mavericks"
  - Stable rankings among major national carriers

National wireless carriers' rankings

1999	2000	2001	2002	2003	2004(Q1)
SBC	Verizon	Verizon	Verizon	Verizon	Verizon
AT&T Wireless	Cingular	Cingular	Cingular	Cingular	Cingular
Vodafone Airtouch	AT&T Wireless	AT&T Wireless	AT&T Wireless	AT&T Wireless	AT&T Wireless
Bell Atlantic	Sprint PCS	Sprint PCS	Sprint PCS	Sprint PCS	Sprint PCS
GTE	Nextel	Nextel	Nextel	Nextel	T-Mobile
Sprint PCS	ALLTEL	Voicestream (T-Mobile)	T-Mobile	T-Mobile	Nextel

Sources: 2003–2004 data from UBS Report *Wireless 411* (June 2004), Table 3, page 16; and 1999–2002 data from FCC wireless industry competition reports. Calculations by Bates White.

Merger will remove several key constraints on coordinated interaction

- Further narrows competitor asymmetries
- Further increases industry transparency
- Allows merging parties to commit more credibly to coordinated interaction
- Reduces competition through various foreclosure incentives
  - Increases effectiveness of punishment

ILECs can foreclose wireless carriers

- Re-optimization of networks
- Special access charges
- Interconnection
- Transiting
- Origination and termination of local and long-distance calls

"…bear in mind the great extent to which wireless networks rely on wireline transport, almost all of which is provided by the ILECs…"

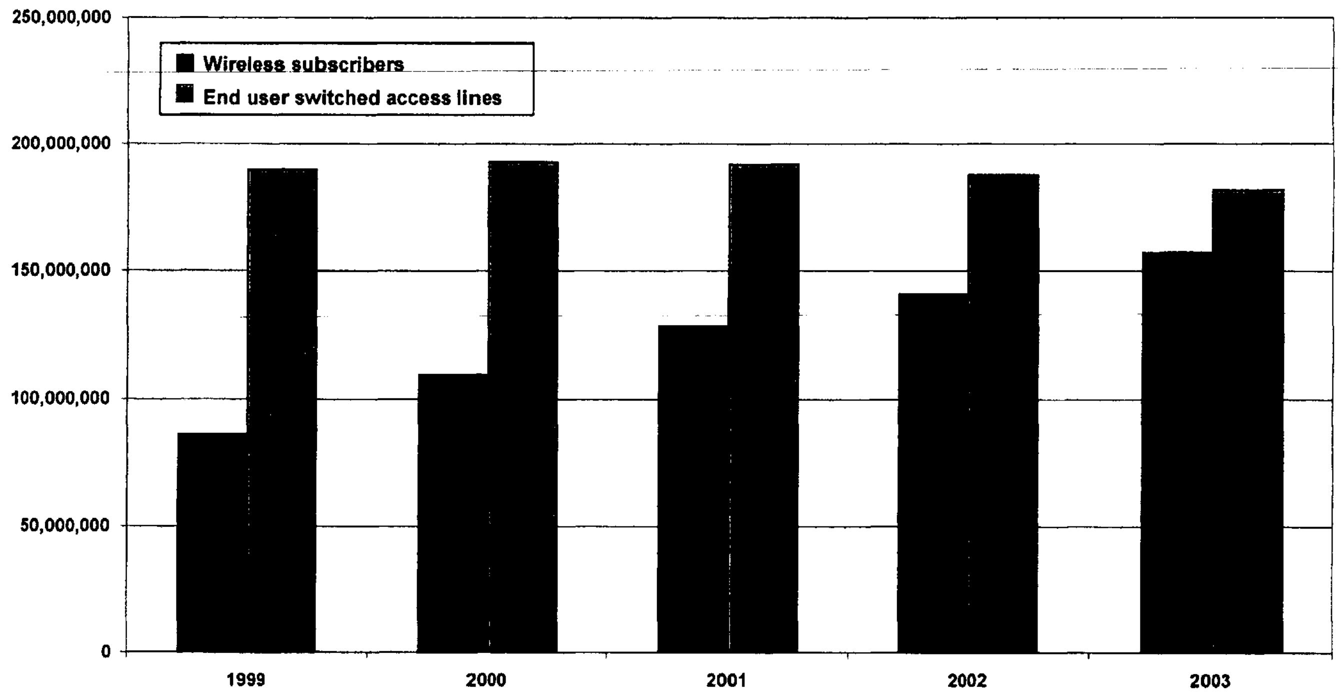
AT&T Wireless, Triennial Review Presentation, December 17, 2002

Bundling Concerns

Anticompetitive bundling strategies may become more effective

- While SBC and BellSouth can already bundle, by increasing their shares in wireless, their incentives and likelihood of success from such strategies are enhanced greatly
- Bundling effects
  - Protect ILEC monopoly (monopoly preservation theory)
  - Foreclosure (3M-type theory)

Competition between wireless and wireline is real

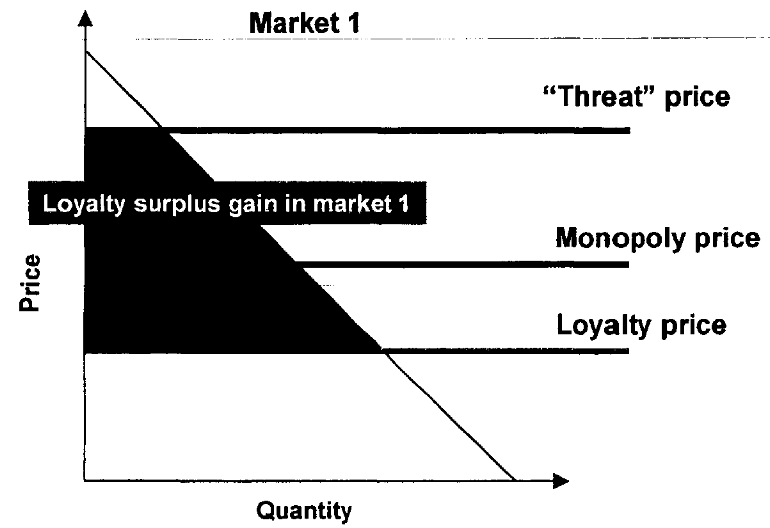


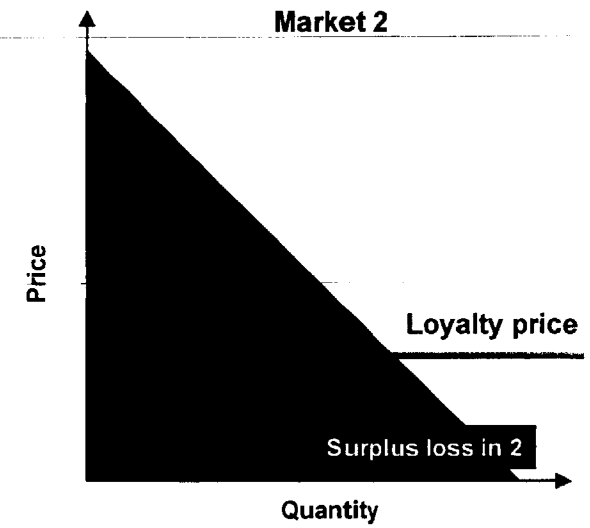
Sources: *Eighth FCC CMRC Competition Report*, Appendix D, Table 1 (page 109); and *FCC Local Telephone Competition: Status as of December 31, 2003*, Table 1 (page 8) and Table 13 (page 20).

Bundling could operate through a 3M-type theory

- Allegations made in the 3M/LePage case:
  - 3M is the dominant manufacturer of transparent tape with its Scotch brand
  - LePage sells private-label transparent tape
  - LePage challenged 3M's practice of offering large rebates when customers met share and quantity requirements across a number of 3M's product lines
- Similar theory presented in *Ortho Diagnostic Systems* and discussed in recent presentations by David Sibley, current chief economist at the DoJ's antitrust division
- A working paper by two DoJ economists (Patrick Greenlee and David Reitman) presents a formal model for analyzing these bundling effects
- Response to arguments that there is only "one monopoly profit" which dominant firms can extract

Basic mechanism is use of a "threat" price





- Monopolist charges a price to those that do not accept the bundle higher than the monopoly price
- Price is so high, consumers are willing to pay more for the second good to get the lower price in the monopolized good

Basic results

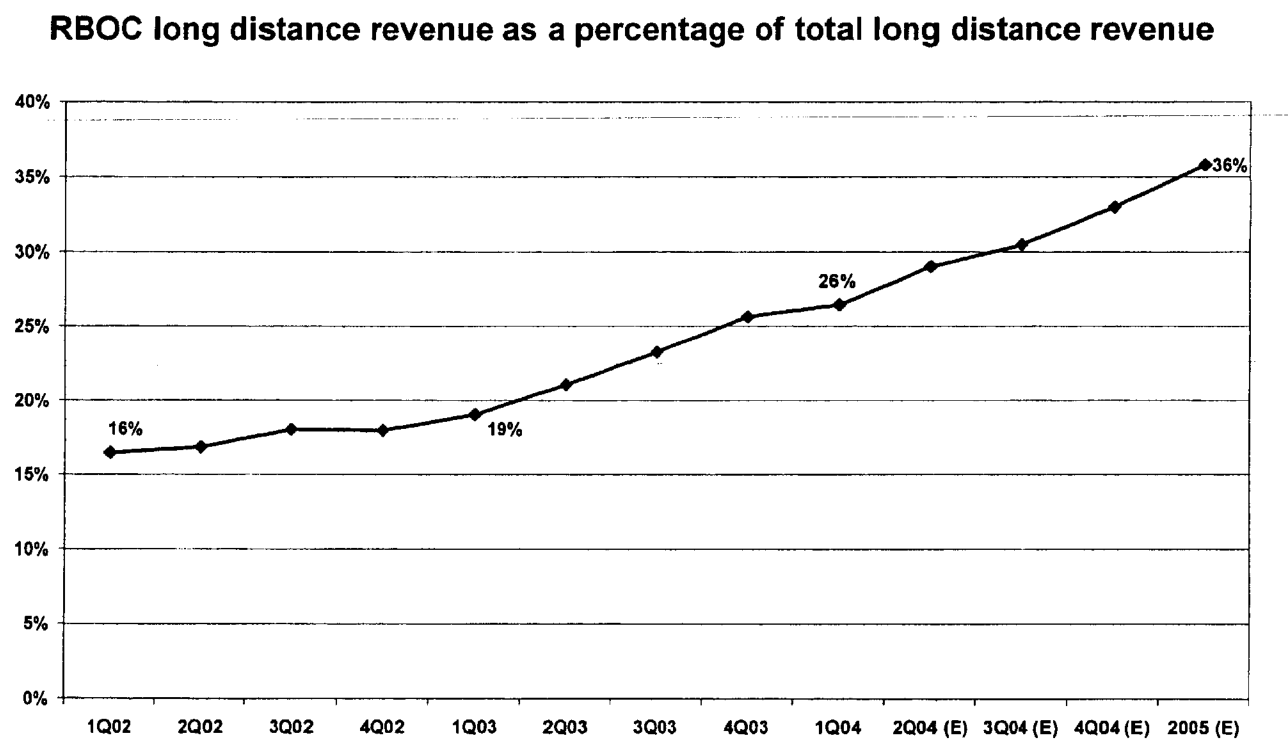
- Consumers choose bundled offer because they obtain greater surplus than under non-bundled offer
  - However, they are given a false choice
  - Worse off than if bundling was not an option
- The monopolist can successfully foreclose competitors from the second market, even if they have identical costs
- Profits for the monopolist are higher under the loyalty discount program, even in the short term

Theory is viable in this matter despite regulation of basic local phone service

Parties' defenses against bundling claims are not persuasive

- Take rates for RBOC bundles that include wireless are increasing rapidly
- ~~Entry would be neither timely nor likely~~
- Reselling opportunities are limited and not as effective as *de novo* entry

RBOC long distance share is increasing rapidly



Source: UBS Wireline Postgame Analysis 7.0 (June 1, 2004), Table 36, page 63.

Summary of Competitive Analysis

Transaction threatens competition on several levels

- Immediate reduction in competition in wireless communications by making coordinated interaction "more likely, more successful, and more complete"
  - Exacerbates current trend toward greater transparency and increased symmetry among major players
  - Enables existing players to lead and enforce collusive understandings more effectively and completely
- By harming competitive efficacy of non-ILEC affiliated wireless carriers and the wireless market generally, challenge to ILEC monopoly from wireless carriers is weakened

Efficiency Claims

Efficiency claims: not compelling or merger specific

- Transition costs could be substantial and are ignored by the parties
- Cingular's claims that it needs spectrum to support legacy technologies appear questionable
- Claims for provisioning advanced services in rural areas should be regarded skeptically
- Claims regarding "trunking" efficiencies are not well documented
- "Best practices" claims are not merger specific